

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

Outback Campground & Resort, L.L.C.
Tama County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2008-WW- ~~25~~
NO. 2008-SW- ~~18~~
NO. 2008-AQ- ~~24~~

TO: Luke Squires, Owner
3220 H Avenue
Tama, IA 52339

Dennis D. Appelgate, Registered Agent
120 E. High Street, P.O. Box 249
Tama, IA 52342

John Werner, Attorney
P.O. Box 249
Toledo, IA 52342

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Outback Campground & Resort, L.L.C. (Outback) for the purpose of resolving violations involving storm water discharge permit requirements, improper solid waste disposal, and improper open burning. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

David Perry, Field Office 5
Iowa Department of Natural Resources
401 SW 7th Street, Suite 1
Des Moines, Iowa 50309
Phone: 515/725-0419

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

RECEIVED
AUG 20 2008

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: OUTBACK CAMPGROUND & RESORT L.L.C.

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 (waste water) or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Outback is a family campground that is capable of accommodating RV campers and tent/primitive camping. It is located on the outskirts of the city of Tama, Iowa, in Tama County. The facility has a number of recreational opportunities, including an outdoor swimming pool.

2. On August 8, 2007, a complaint was received by DNR Field Office 5 from the Black Hawk County Health Department. The complaint reported that there was a cross connection with the water piping scheme between Poweshiek Rural Water and Outback's private well plumbing.

3. On September 26, 2007, an initial on-site investigation was made by David Perry, DNR Field Office 5, in response to the complaint. During the investigation, it was observed and documented that there was a cross connection with the water plumbing. Mr. Perry also observed that there was a violation of the National Pollutant Discharge Elimination System (NPDES) permitting requirements pertaining to the disturbance of over one acre of ground. Mr. Perry also observed a small deposit of solid waste consisting of metal, plastic, wood, and cardboard piled on the facility grounds.

4. On September 28, 2007, a Notice of Violation letter responding to the deficiencies identified during the September 26, 2007 investigation was sent to Luke Squires, the campground's owner. Disturbing more than an acre of land without a NPDES General Permit No. 2 and improper solid waste disposal were two of the violations cited in the letter. Mr. Squires was informed that he needed to address the cross connection issues immediately and correct the other violations no later than November 1, 2007.

5. On December 14, 2007, Mr. Perry again investigated the site. During the investigation, it was determined that the cross connection issue had been corrected. However, the NPDES permitting issues remained unresolved. Mr. Perry also observed

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: OUTBACK CAMPGROUND & RESORT L.L.C.

where some of the solid waste had been removed from the area where the previous deposit existed but that there was another area that had been excavated containing new solid waste. Charred remains were observed in the excavated area by Mr. Perry.

6. On December 17, 2007, a telephone conversation pertaining to the December 14, 2007 investigation occurred between Mr. Perry and Mr. Squires. Mr. Squires revealed that he had not as yet complied with the NPDES permit requirements. He also informed Mr. Perry that the excavated area was a burn pit where he burned off combustible materials prior to removal of the non-combustible materials to the landfill. Mr. Perry informed Mr. Squires at that time that open burning is illegal.

7. On December 18, 2007, a second Notice of Violation letter was sent to Mr. Squires for failing to apply for an NPDES permit pertinent to the disturbed area on the facility's grounds. The letter also noted the open burning and solid waste violations.

8. On April 17, 2008, Mr. Perry returned to Outback for a follow-up inspection. It was determined that Outback had completed all of the requirements in the previous Notice of Violation letters. During the inspection, Mr. Perry reminded Mr. Squires of the waste water, open burning, and solid waste disposal requirements as they pertained to Outback.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.173(3) authorizes the Environmental Protection Commission (Commission) to adopt rules relating to the operation of and issuance of permits to waste disposal systems. Iowa Code section 455B.103A authorizes the issuance of general permits for storm water discharges. The Commission has adopted the regulations pertaining to the issuance of NPDES permits for storm water discharge at 567 IAC 60.2 and 64.3 through 64.16. Pursuant to rule 60.2, "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. Number 10 under this definition includes "construction activity" including clearing, grading and excavation activities except operations that result in the disturbance of less than 1 acre of total land area which are not part of a larger common plan or development or sale.

2. 567 IAC 64.4(2) provides that the Director may issue general permits which are consistent with 64.4(2)"b" and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2), and 64.9(455B) for the following activities: (1) storm water point sources requiring an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26 (as amended through June 15, 1992). Subrule 64.15(2) adopts Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2. Subrule 64.6(2) provides that upon the submittal of a complete Notice of Intent in accordance with subrule 64.6(1) and 64.3(4)"b", the applicant is authorized to discharge, unless notified by the DNR to the contrary. Subrule 64.3(1) provides that no

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: OUTBACK CAMPGROUND & RESORT L.L.C.

person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the Director. Outback failed to obtain an NPDES General Permit No. 2 prior to the construction project at the facility. The above-stated facts indicate a violation of this provision.

3. General Permit No. 2, Part IV, provides that the permittee must develop and implement a "pollution prevention plan" in accordance with good engineering practices to prevent and reduce the amount of pollutants in storm water runoff. Outback failed to have a pollution prevention plan in place when the construction project began.

4. Iowa Code section 455B.133 provides that the Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.

5. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in rules 23.2(2) (variances) and 23.2(3) (exemptions). The above facts demonstrate violations of this provision.

6. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

7. 567 IAC 100.4 prohibits a private or public agency dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The above facts demonstrate non-compliance with this provision.

V. ORDER

THEREFORE, the DNR orders and Outback agrees to do the following:

1. Ensure that there will not be any future water supply cross connections at the facility;
2. Cease any further open burning of solid waste on the facility grounds; and
3. Pay a penalty of \$1,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: OUTBACK CAMPGROUND & RESORT L.L.C.

\$10,000.00 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$1,000.00. The administrative penalty is determined as follows:

Economic Benefit – Outback benefited from not obtaining a NPDES permit prior to beginning the construction project. Outback also benefited from failing to prepare a pollution prevention plan, failing to implement that plan, and from failing to maintain the storm water controls. Therefore, \$500.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Outback failed to establish a SWPPP prior to beginning construction to help prevent and reduce the amount of pollutants in storm water runoff. This violation threatens the integrity of the water quality program. Therefore, \$250.00 is assessed for this factor.

Culpability – Outback has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Outback failed to abide by DNR's rules and requirements. Therefore, \$250.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

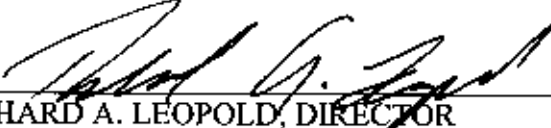
This administrative consent order is entered into knowingly and with the consent of Outback. For that reason Outback waives its rights to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: OUTBACK CAMPGROUND & RESORT L.L.C.

General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146, 455B.191, and 455B.307.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 26 day of
August, 2008.



OUTBACK CAMPGROUND & RESORT L.L.C.

Dated this 12th day of
August, 2008.

Tama County; Kelli Book; Field Office 5; David Perry; I.C.7.b; V.I.C; VII.C.2